IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 2ND MARCH 2007 / 11TH PHALGUNA 1928

WP(C).No. 6369 of 2007(G)

PETITIONER:

P.V. ABOOBAKER, PUTHANKOTTU VADAKE VEETIL, CHELLAKADU P.O., PERINTHALMANNA, MALAPPURAM.

BY ADV. SRI.M.K.CHANDRA MOHANDAS

RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY THE SECRETARY TO GOVERNMENT, LOCAL SELF GOVERNMENT DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.

2. THE CALICUT CORPORATION REPRESENTED BY THE SECRETARY, CORPORATION OFFICE, CALICUT.

3. THE CALICUT DEVELOPMENT AUTHORITY REPRESENTED BY THE SECRETARY, CALICUT.

4. THE CHIEF TOWN PLANNER, OFFICE OF THE CHIEF TOWN PLANNER, THIRUVANANTHAPURAM.

BY SRI.C.M.SURESH BABU, SC, KOZHIKODE CORPORATION
SRI.M.K.ABOOBACKER(R3)
GP SRI.K.J.MOHAMMED ANSAR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 02/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE, J.

W.P.(C) No. 6369 OF 2007

Dated this the 2nd day of March, 2007

JUDGMENT

Heard Sri. M.K. Chandramohan Das, counsel for the petitioners, Sri.C.M. Suresh Babu, Standing Counsel for the Calicut Corporation, Sri.M.K. Aboobacker, Standing Counsel for the Calicut Development Authority and the Government Pleader Sri.K.J. Mohammed Anzar.

2. The grievance of the petitioner is that application for building permit submitted by him have been rejected by the respondents on the ground that the area upon which the building is proposed to be constructed is earmarked in the Town Planning Scheme for a project by name 'Dream City Project'. Ext.P1 is the rejection order. Impugning Ext.P1 on various grounds the petitioner prays that rejection order be quashed and directions be issued to respondents 2 and 3 to grant NOC/building permit as applied for by him.

3. Having regard to the submissions addressed before me by the counsel appearing for the various parties, I find force in the submission of the learned counsel for the petitioner that the issue is covered by the judgment of Supreme Court in **Raju Jethmalani & others V.State of Maharashtra & others** [(2005) 11 SCC 222] and also by judgment of the Division Bench of this Court in **Padmini V. State of Kerala** [1999 (3)

KLT 465]. Concededly no notification under Section 4 of the Land Acquisition Act has been promulgated so far for acquisition of any portion of the petitioner's property in connection with Dream City Project or any other project. The learned Government Pleader submitted that the Government is very seriously considering the implementation of the Dream City Project. Even though the project had been under consideration for several years no concrete steps have been taken so far in implementation of the project, I do not think that the respondents are justified in freezing the properties of the petitioners indefinitely. The principles laid down in **Jathmalani**'s case(supra) and the judgment in **Padmini**'s case also should be taken into account.

4. Under these circumstances, the Writ Petition will stand disposed of issuing the following directions:

The petitioner is directed to file undertaking in the form of affidavit before the 1st respondent stating that in the event of any notification under Section 4(1) of the Land Acquisition Act being promulgated within a period of 15 months from the date of issuance of permit by the 2nd respondent, the petitioner will surrender the plots upon which the building is constructed on the strength of the permit together with the above building, without making any objection or claim for compensation for the building. Once such undertaking is submitted by the petitioner,

respondents 2 and 3 will issue necessary NOCs and building permits to the petitioner provided the plan submitted by the petitioner is otherwise in order. In other words, the proposal to have the Dream City Project implemented shall not be a ground for rejecting application for building permits. It is made clear that this judgment will not stand in the way of the Corporation or the Government in acquiring the properties of the petitioner for any other public purpose even after the period of 15 months mentioned above. But under such a contingency, the petitioner will be entitled for adequate compensation under the provisions of Land Acquisition Act.

PIUS C. KURIAKOSE, JUDGE

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